

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

In re:)
JASON LEWIS ZILBERBRAND,) Case No. 17-04034
Debtor.) Hon. A. Benjamin Goldgar
) Chapter 7

NOTICE OF MOTION

To: Attached Service List

David Gassman has filed papers with the court to obtain relief from the amended final pretrial order.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one).

If you do not want the court to grant the relief sought in the motion, or if you want the court to consider your views on the motion, then on March 12, 2018, you or your attorney must:

Attend the hearing scheduled to be held on March 12, 2018 at 9:30 AM in Room 642 of the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, 219 South Dearborn St., Chicago, Illinois,

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Date: March 8, 2018

David Gassman

/s/ Paul M. Bauch
One of his attorneys
Paul M. Bauch (ARDC #6196619)
Carolina Y. Sales (ARDC #6287277)
BAUCH & MICHAELS, LLC
53 W. Jackson Boulevard, Suite 1115
Chicago, Illinois 60604
Tel.: (312) 588-5000
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CERTIFICATE OF SERVICE

The undersigned attorney certifies that on March 8, 2018, we caused this document to be served upon the persons identified above or on the attached service list by personally delivering a copy to the recipient at his or her respective address before 4:00 P.M; or mailing a copy to the recipient at his or her respective address by depositing the same in United States Post Office Box with proper first class postage affixed thereto; or personally delivering a copy to the recipient at his or her respective facsimile transmittal number, this transmittal being sent from a facsimile machine at 312-427-5709, and a copy of the facsimile transmittal record being attached hereto; or electronically delivering a copy through the Court's CM/ECF filing system.

/s/ Paul M. Bauch

SERVICE LIST

Via CM/ECF to

Ilene F. Goldstein, Esq., ifgcourt@aol.com

Jeffrey C. Dan, jdan@craneheyman.com

Patrick S. Layng, USTPRegion11.ES.ECF@usdoj.gov

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In re:)
) Case No. 17-04034
JASON LEWIS ZILBERBRAND,)
) Hon. A. Benjamin Goldgar
Debtor.)
) Chapter 7

**DAVID GASSMAN'S MOTION FOR RELIEF
FROM AMENDED FINAL PRETRIAL ORDER**

David Gassman (“Gassman”), by and through his attorneys, Bauch & Michaels, LLC, pursuant to Fed. R. Civ. P. 60 and Fed. R. Bankr. P. 9024, hereby moves this Court for relief from the *Amended Final Pretrial Order* (the “Order”) [ECF No. 41].

I. JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

II. BACKGROUND

3. On February 13, 2017 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 7, Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the “Court”).

4. Gassman is a creditor who holds an unsatisfied judgment and other claims against the Debtor. On August 4, 2017, Gassman filed a Motion to Dismiss the Debtor’s bankruptcy case pursuant to Section 707(a) of the Bankruptcy Code

under the principles set forth in *In re Schwartz*, 799 F. 3d 760 (7th Cir. 2015) [ECF No. 24].

5. On December 6, 2017, this Court entered its Final Amended Pretrial Order, which set deadlines for discovery and pretrial filings [ECF No. 41]. The Motion to Dismiss is set for trial on March 14, 2018.

III. ARGUMENT

6. Pursuant to Fed. R. Civ. P. 60, made applicable to this proceeding by Fed. R. Bankr. P. 9024, the Court may grant relief from an order as a result of “mistake, inadvertence, surprise, or excusable neglect.” Fed. R. Civ. P. 60(b)(1). “The court may correct a . . . mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice.” *In re Jesus Enrique Batista-Sanechez*, No. 12-48247, 2014 Bankr. LEXIS 403, at *1-2 (Jan. 27, 2015).

7. The Order requires the parties to file exhibit and witness lists by February 21, 2018, exchange copies, and deliver the lists and exhibits to the Court. Gassman filed an exhibit list and witness list on the February 21, 2018 deadline and delivered the lists and exhibits to the Court and the Debtor. Gassman produced Exhibits 12-2, 12-3, and 13-2 (summaries of financial transactions) to the Debtor and included them on his exhibit list but inadvertently failed to provide them to the Court. In addition, Gassman has amended Exhibits 12-2 and 12-3 (attached hereto) to provide further clarity. Gassman also seeks to include a supplemental exhibit (Exhibit 4-1): the Debtor’s Amended Schedule A/B filed on March 7, 2018, which

includes a \$1.2 million claim against Gassman for “slander, libel and harassment” [ECF No. 62].

8. Moreover, Gassman seeks leave to have his amended witness list deemed timely filed on March 7, 2018, when the oversight was brought to his attention [ECF No. 67]. Gassman’s original witness list mistakenly omitted the “brief description of the subject matter of the witness’s testimony” [ECF No. 57]. The amended witness list includes detailed descriptions of the witnesses’ testimony. These witnesses are individuals who are known to the Debtor, and the Debtor could already anticipate the subject matter of their testimony. In fact, the Debtor is the primary witness that Gassman intends to call at the hearing.

WHEREFORE, Gassman prays that this Court grant relief from the Order to (1) permit Gassman to submit Exhibit 4-1 and 13-2, as well as amended Exhibits 12-2 and 12-3; (2) grant leave to amend his witness list; and (3) for such other and further relief as is appropriate.

Dated: March 8, 2018

David Gassman

/s/ Paul M. Bauch
One of his attorneys

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